

AMENDED IN ASSEMBLY MAY 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 984

Introduced by Assembly Member Vargas

February 20, 2003

An act to amend Sections 9855, 9855.2, and 9855.5 of the Business and Professions Code, and to amend Section 1794.41 of the Civil Code, and to amend Sections 116, 116.5, and 1634 of, and to add Part 8 (commencing with Section 12800) to Division 2 of, the Insurance Code, relating to service contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 984, as amended, Vargas. Service contracts: automobile insurance.

(1) Existing law, effective until January 1, 2008, regulates service contracts, as defined, relating to the maintenance or repair of specified sets and appliances, and allows for the administration of service contracts by service contract administrators, as defined. Existing law prohibits a service contract administrator from serving as the obligor on a service contract.

This bill would allow a service contract administrator to serve as the obligor on a service contract ~~if the~~. *It would require a service contract administrator to insure* all of its service contract obligations under a service contract reimbursement insurance policy, as specified, ~~and if certain other conditions are satisfied~~ *satisfy certain other*

requirements. It would require that any service contract insured by a service contract reimbursement insurance policy disclose the right of the service contractholder to apply directly to the reimbursement insurance company for satisfaction under the service contract under certain conditions.

(2) Existing law, effective until January 1, 2008, precludes a service contract seller from issuing a service contract and a service contract administrator from administering service contracts without complying with the respective requirements, as specified, applicable to each.

This bill would also permit a service contract seller and a service contract administrator serving as the obligor under a service contract to meet the respective requirements by being insured, as specified.

The bill would provide that ~~the service contracts covered by these provisions are not regulated by~~ provisions of law relating to the regulation of insurance *shall not apply to service contracts that are issued by a service contract administrator and that are subject to, and comply with, specified requirements.*

(3) Existing law generally regulates automobile insurance and sets forth various circumstances under which a contract covering only defects in material and workmanship in automobiles, and certain related items, may not be deemed insurance.

This bill would eliminate the provisions exempting these contracts from being deemed insurance. It would, instead, define a “vehicle service contract” and would provide that this type of contract does not constitute automobile insurance when it meets specified requirements. The bill would allow a vehicle service contract to be sold only by the seller, *as defined*, of the motor vehicle or watercraft covered by the contract.

The bill would require an obligor under a vehicle service contract *who is not a seller* to possess a vehicle service contract provider license, and would subject the obligor, the seller, and the administrator, as defined, under the contract to various regulatory provisions, including requirements relating to licensing, contract forms, notices, cancellations, and insurance. A violation of certain of these provisions would be a crime. By creating a new crime, this bill would impose a state-mandated local program.

This bill would place specified limitations on the grounds for denying claims under a vehicle service contract and on the bases for determining commissions for selling this type of contract.



The bill would allow the commissioner to adopt regulations implementing these provisions.

The bill would provide that, if these provisions conflict with certain other provisions of law relating to service contracts, only these provisions shall be given effect.

The bill would make other technical, clarifying changes.

(4) Existing law provides that an agreement promising repair or replacement of a motor vehicle or part thereof after a mechanical or electrical breakdown, where the repair or replacement is at either no cost or a reduced cost for the agreement holder, shall not constitute automobile insurance if the obligor is a manufacturer of motor vehicle lubricants, treatments, fluids, or additives, provided that specified conditions are met.

This bill would provide, instead, that an express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of that substance, shall constitute automobile insurance, unless (a) the obligor is the primary manufacturer, as defined, of the product, (b) the agreement assumes liability only for replacement of the product and for incidental or consequential damages caused by specified failures of the product or its design, (c) the agreement covers only damage incurred while the product was in the vehicle, and (d) the agreement is provided automatically with the product at no extra charge.

(5) Existing law prohibits a person from soliciting, negotiating, or effecting contracts of insurance, or acting in other specified capacities, unless the person holds a valid license from the commissioner. Existing law exempts from this requirement a person acting in the capacity of an employee, not paid on a commission basis, of a home protection company.

This bill would provide that this exemption applies to an employee of a home protection company, not paid on a commission basis, who engages in soliciting, negotiating, or effecting home protection contracts.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9855 of the Business and Professions
2 Code is amended to read:
3 9855. The definitions used in this section shall govern the
4 construction and terms as used in this chapter:
5 (a) “Service contract” means a contract in writing to perform,
6 over a fixed period of time or for a specified duration, services
7 relating to the maintenance, replacement, or repair of a set or
8 appliance, as defined by this chapter.
9 (b) “Service contract administrator” or “administrator”
10 means a person, other than a service contract seller or an insurer
11 admitted to do business in this state, who performs or arranges, or
12 has an affiliate who performs or arranges, the collection,
13 maintenance, or disbursement of moneys to compensate any party
14 for claims or repairs pursuant to a service contract, and who also
15 performs or arranges, or has an affiliate who performs or arranges,
16 any of the following activities on behalf of service contract sellers:
17 (1) Providing service contract sellers with service contract
18 forms.
19 (2) Participating in the adjustment of claims arising from
20 service contracts.
21 (3) Arranging on behalf of service contract sellers the
22 insurance required by Section 9855.2.
23 (4) Serving as an obligor on a service contract pursuant to
24 subdivision (c) of Section 9855.2.
25 (c) “Service contract seller” or “seller” means a person who
26 sells or offers to sell a service contract to a service contractholder.
27 “Service contract seller” or “seller” may include a person who
28 is the obligor under a service contract sold by the seller,
29 manufacturer, or repairer of the product covered by the service
30 contract.
31 (d) “Service contractholder” means a person who purchases or
32 receives a service contract from a service contract seller.
33 (e) “Service contractor” means a service contract
34 administrator or a service contract seller.

(f) “Service contract reimbursement insurance policy” means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) “Obligor” is the entity financially and legally obligated under the terms of a service contract. An obligor shall be either a service contract administrator that complies with subdivision (c) of Section 9855.2 or a service contract seller.

SEC. 2. Section 9855.2 of the Business and Professions Code is amended to read:

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless he or she complies with one of the following requirements:

(1) Files with the director the most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

~~(2) Insures 100 percent of his or her service contract obligations under a service contract reimbursement insurance policy issued by an insurer that is admitted in this state, that is authorized by the Department of Insurance to issue that insurance in this state, that maintains surplus as to policyholders and paid in capital of at least twenty-five million dollars (\$25,000,000), and that is rated “A-” or higher by A.M. Best Company.~~

(2) Obtains a service contract reimbursement insurance policy that complies with the requirements of paragraphs (1) to (5), inclusive, and paragraph (7) of subdivision (c).

~~(3) Sells service contracts that are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller’s service contracts or qualifies as an obligor pursuant to subdivision (c).~~
contract administrator that complies with subdivision (c).

(4) Maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

~~(b) Except as provided in subdivision (c), a service contract~~

(b) A service contract administrator shall not administer service contracts sold in this state unless a service contract reimbursement insurance policy covering these service contracts has been obtained.

(c) A service contract administrator shall ~~not be an obligor on a service contract unless the following conditions are satisfied:~~
comply with each of the following requirements:

(1) The service contract administrator ~~insures 100 percent of its service contract obligations under a service contract reimbursement insurance policy issued by an insurer that is~~ shall obtain a service contract reimbursement insurance policy that names the seller or administrator as the insured, insures 100 percent of the insured's service contract obligations, and is issued by an insurer that is admitted in this state, that is authorized by the Department of Insurance to issue that insurance in California, that maintains surplus as to policyholders and paid-in capital of at least twenty-five million dollars (\$25,000,000), ~~and~~ that is rated "A-" or higher by A.M. Best Company, *and that annually files an audited financial statement with the Department of Insurance.*

(2) The service contract reimbursement insurance policy states that service contractholders may apply directly to the insurer for satisfaction under a service contract.

(3) The service contract reimbursement insurance policy ~~provides that it may not be cancelled by the insurer or the service contract administrator~~ shall provide that it may not be cancelled by the insurer or the named insured unless either party provides written notice of cancellation to the bureau at least 60 days before the effective date of the cancellation. *However, the policy may provide that the insurer may immediately cancel the policy material misrepresentation or nonpayment of premium if the insurer provides notice to the bureau postmarked on or before the effective date of cancellation.*

(4) The reimbursement insurance policy ~~fully insures all obligations of the service contract administrator~~ shall fully insure all obligations of the named insured, including the administration and costs of administration of all service contracts, and the policy

1 does not provide coverage only in the event of the default of the
2 ~~service contract administrator.~~

3 ~~(5) The service contract administrator is named insured.~~

4 (5) *The named insured shall be* the agent of the insurer that
5 issued the service contract reimbursement insurance policy *solely*
6 for purposes of obligating the insurer to service contractholders in
7 accordance with the service contract and this article. Payment by
8 a consumer to a service contract seller or a service contract
9 administrator constitutes payment to the insurer that issued the
10 reimbursement insurance policy.

11 (6) The service contract form ~~identifies the name and address~~
12 ~~of the service contract administrator~~ *shall identify the name and*
13 *address of the named insured* and the service contract seller, and
14 the form contains a statement substantially in the following
15 language: "This contract is not guaranteed by the California
16 Insurance Guarantee Fund."

17 (7) The service contract administrator ~~maintains~~ *shall*
18 *maintain* the following records for a period of three years after the
19 expiration of each service contract, and agrees to make the records
20 available to its reimbursement insurance company:

21 (A) Copies of each type of service contract sold.

22 (B) The name and address of each service contract purchaser,
23 to the extent that the name and address have been furnished by the
24 service contract purchaser.

25 (C) A list of the locations where service contracts are marketed,
26 sold, or offered for sale.

27 (D) Written claims files containing at least the dates and
28 descriptions of claims related to the service contracts.

29 (8) The service contract administrator ~~only incurs~~ *shall only*
30 *incur* service contract obligations under service contracts that
31 cover items referenced in subdivision (a) of Section 9855 and that
32 are sold by service contract sellers that have either sold,
33 manufactured, distributed, or serviced the actual items covered by
34 the service contract.

35 (d) Any service contract insured by a service contract
36 reimbursement insurance policy must disclose the right of the
37 service contractholder to apply directly to the reimbursement
38 insurance company for satisfaction under the service contract in
39 the event that the obligor does not honor a contract promise or does
40 not provide a covered service ~~after~~ *within 60 days of the date* proof

1 of loss is provided by the service contractholder to the obligor in
2 the manner specified in the service contract.

3 SEC. 3. Section 9855.5 of the Business and Professions Code
4 is amended to read:

5 9855.5. A service contractor shall comply with the provisions
6 of Sections 1794.4 and 1794.41 of the Civil Code. ~~Service~~
7 ~~contracts in compliance with this article are not regulated by the~~
8 ~~Insurance Code. The provisions of the Insurance Code shall not~~
9 ~~apply to service contracts that are issued by a service contract~~
10 ~~administrator and that are subject to, and comply with, subdivision~~
11 ~~(c) of Section 9855.2.~~

12 SEC. 4. Section 1794.41 of the Civil Code is amended to read:

13 1794.41. (a) No service contract covering any motor vehicle,
14 home appliance or home electronic product purchased for use in
15 this state may be offered for sale or sold unless all of the following
16 elements exist:

17 (1) The contract shall contain the disclosures specified in
18 Section 1794.4 and shall disclose in the manner described in that
19 section the buyer's cancellation and refund rights provided by this
20 section.

21 (2) The contract shall be available for inspection by the buyer
22 prior to purchase and either the contract, or a brochure which
23 specifically describes the terms, conditions, and exclusions of the
24 contract, and the provisions of this section relating to contract
25 delivery, cancellation, and refund, shall be delivered to the buyer
26 at or before the time of purchase of the contract. Within 60 days
27 after the date of purchase, the contract itself shall be delivered to
28 the buyer. If a service contract for a home appliance or a home
29 electronic product is sold by means of a telephone solicitation, the
30 seller may elect to satisfy the requirements of this paragraph by
31 mailing or delivering the contract to the buyer not later than 30
32 days after the date of the sale of the contract.

33 (3) The contract is applicable only to items, costs, and time
34 periods not covered by the express warranty. However, a service
35 contract may run concurrently with or overlap an express warranty
36 if (A) the contract covers items or costs not covered by the express
37 warranty or (B) the contract provides relief to the purchaser not
38 available under the express warranty, such as automatic
39 replacement of a product where the express warranty only
40 provides for repair.

(4) The contract shall be cancelable by the purchaser under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

(B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars (\$25), whichever is less.

(C) If the purchase of the service contract was financed, the seller may make the refund payable to the purchaser, the assignee, or lender of record, or both.

(b) Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to

1 Part 7 (commencing with Section 12740) of Division 2 of the
2 Insurance Code.

3 (c) The amendments to this section made at the 1988 portion of
4 the 1987–88 Regular Session of the Legislature that extend the
5 application of this section to service contracts on home appliances
6 and home electronic products shall become operative on July 1,
7 1989.

8 (d) If any provision of this section conflicts with any provision
9 of Part 8 (commencing with Section 12800) of Division 2 of the
10 Insurance Code, the provision of the Insurance Code shall apply
11 instead of this section.

12 SEC. 5. Section 116 of the Insurance Code is amended to read:

13 116. (a) Automobile insurance includes insurance of
14 automobile owners, users, dealers, or others having insurable
15 interests therein, against hazards incident to ownership,
16 maintenance, operation, and use of automobiles, other than loss
17 resulting from accident or physical injury, fatal or nonfatal, to, or
18 death of, any natural person.

19 (b) Automobile insurance also includes any contract of
20 warranty, or guaranty that promises service, maintenance, parts
21 replacement, repair, money, or any other indemnity in event of loss
22 of or damage to a motor vehicle or a trailer, as defined by Section
23 630 of the Vehicle Code, or any part thereof from any cause,
24 including loss of or damage to or loss of use of the motor vehicle
25 or trailer by reason of depreciation, deterioration, wear and tear,
26 use, obsolescence, or breakage if made by a warrantor or guarantor
27 who is doing an insurance business.

28 (c) Automobile insurance also includes any agreement that
29 promises repair or replacement of a motor vehicle, or part thereof,
30 after a mechanical or electrical breakdown, at either no cost or a
31 reduced cost for the agreement holder. However, automobile
32 insurance does not include a vehicle service contract subject to Part
33 8 (commencing with Section 12800) of Division 2, or an
34 agreement deemed not to be insurance under that part.

35 (d) The doing or proposing to do any business in substance
36 equivalent to the business described in this section in a manner
37 designed to evade the provisions of this section is the doing of an
38 insurance business.

39 SEC. 6. Section 116.5 of the Insurance Code is amended to
40 read:



116.5. An express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, shall constitute automobile insurance, unless each of the following requirements is met:

(a) The obligor is the primary manufacturer of the product. For the purpose of this section, “manufacturer” means a person who can prove clearly and convincingly that ~~he or she formulates and produces substantially all of the product. “Manufacturer” does not include a person who merely relabels, distributes, or adds minimal value to a product.~~ *the per unit cost of owned or leased capital goods, including the factory, plus the per unit cost of nonsubcontracted labor, exceeds twice the per unit cost of raw materials. “Manufacturer” also means a person who has formulated or produced, and continuously offered in this state for more than 10 years, a motor vehicle lubricant, treatment, fluid, or additive.*

(b) The agreement assumes liability only for replacement of the product and for incidental or consequential damages caused by a proven failure of the product to meet the manufacturer’s specifications or a proven failure of the product’s design to meet industry standards for a product of this type.

(c) The agreement covers only damage incurred while the product was in the vehicle.

(d) The agreement is provided automatically with the product at no extra charge.

SEC. 7. Section 1634 of the Insurance Code is amended to read:

1634. No license is required under this chapter for a person to act in any of the following capacities:

(a) As a full-time salaried employee of a title insurer, controlled escrow company or an underwritten title company.

(b) As a salaried solicitor or agent of a mortgage insurer or mortgage guaranty insurer provided no part of the compensation of the person is on a commission basis.

(c) As the attorney in fact of a reciprocal or interinsurance exchange.

(d) As a life and disability insurance analyst.

(e) As a surplus line broker or special lines surplus line broker.

(f) As a bail agent, bail solicitor or bail permittee.

(g) As an employee, not paid on a commission basis, of a home protection company, including, but not limited to, soliciting, negotiating, or effecting home protection contracts by the employee.

(h) As an employee of a creditor who secures and forwards information for the purpose of obtaining group credit life, credit disability, or involuntary unemployment insurance, or for enrolling individuals in a group credit life, credit disability, or involuntary unemployment insurance plan or issuing certificates of insurance thereunder where no commission is paid to the employee for those services.

SEC. 8. Part 8 (commencing with Section 12800) is added to Division 2 of the Insurance Code, to read:

PART 8. SERVICE CONTRACTS

12800. The following definitions apply for purposes of this part:

(a) “Motor vehicle” means a self-propelled device operated solely or primarily upon roadways to transport people or property. However, ‘motor vehicle’ shall not include a self-propelled vehicle, or a component part of such a vehicle, that has any of the following characteristics:

(1) Has a gross vehicle weight rating of 30,000 pounds or more, and is not a recreational vehicle as defined by Section 18010 of the Health and Safety Code.

(2) Is designed to transport more than 10 passengers, including the driver.

(3) Is used in the transportation of materials considered hazardous pursuant to the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), as amended.

(b) “Watercraft” means a vessel, as defined in Section 21 of the Harbors and Navigation Code.

(c) “Vehicle service contract” means a contract or agreement for a separately stated consideration and for a specific duration to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft because of an operational or structural failure due to a defect in materials or workmanship, or due to normal wear and tear. A vehicle service contract may include coverage for towing, substitute transportation, emergency road ~~service, rental~~

ear reimbursement, and tire failure. “Vehicle service contract” also includes an agreement with a term greater than one year that promises routine or scheduled maintenance, or an agreement that promises service, provided that the obligor for the service is a licensed motor club or insurer; rental car reimbursement, road hazard protection, reimbursement of deductible amounts under a manufacturer’s warranty, and reimbursement for travel, lodging, or meals. “Vehicle service contract” also includes an agreement, for separately stated consideration, that promises repairs at a discount to the purchaser for any combination of parts and labor in excess of 20 percent.

(d) “Service contract administrator” or “administrator” means any person, other than an obligor, who performs or arranges, directly or indirectly, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a vehicle service contract, and who also performs or arranges, directly or indirectly, any of the following activities with respect to vehicle service contracts in which a seller located within this state is the obligor:

(1) Providing sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(e) “Purchaser” means any person who purchases a vehicle service contract from a seller.

(f) “Seller” means either of the following:

(1) With respect to motor vehicles, a ~~motor vehicle dealer, lessor, or lessor-retailer who is licensed in one of those capacities by the Department of Motor Vehicles and who sells vehicle service contracts incidental to his or her business of selling or leasing~~ person who sells vehicle service contracts incidental to that person’s business of selling or leasing motor vehicles.

(2) With respect to watercraft, a ~~retailer of watercraft holding a permit issued by the Board of Equalization pursuant to Section 6067 of the Revenue and Taxation Code.~~ person who sells vehicle service contracts incidental to that person’s business of selling or leasing watercraft vehicles

(g) “Obligor” means the entity legally obligated under the terms of a service contract.

12805. (a) Notwithstanding Sections 103 and 116, the following types of agreements shall not constitute insurance:

1 (1) A vehicle service contract that does each of the following:

2 (A) Names as the obligor a motor vehicle manufacturer or
3 distributor licensed in that capacity by the Department of Motor
4 Vehicles, or a watercraft manufacturer.

5 (B) Covers only motor vehicles or watercraft manufactured,
6 distributed, or sold by that obligor.

7 (2) A vehicle service contract in which the obligor is a seller,
8 provided that the obligor complies with all provisions of this part
9 except Section 12815.

10 (3) A vehicle service contract sold by a seller in which the
11 obligor is a party other than the seller, provided that the obligor
12 complies with all provisions of this part.

13 (4) An agreement in which the obligor is a motor vehicle or
14 watercraft part manufacturer, distributor, or retailer, that covers no
15 more than the following items:

16 (A) The repair or replacement of a part manufactured,
17 distributed, or retailed by that obligor.

18 (B) Consequential and incidental damage resulting from the
19 failure of that part.

20 (5) An agreement in which the obligor is a repair facility, that
21 is entered into pursuant and subsequent to repair work previously
22 performed by that repair facility, and that is limited in scope to the
23 following:

24 (A) The repair or replacement of the part that was previously
25 repaired.

26 (B) Consequential and incidental damage resulting from the
27 failure of that part.

28 (6) A maintenance service contract with a term of one year or
29 less that does not contain provisions for indemnification and does
30 not provide a discount to the purchaser for any combination of
31 parts and labor in excess of 20 percent.

32 (b) The types of agreements described in paragraphs (1), (4),
33 (5), and (6) of subdivision (a) are exempt from all provisions of
34 this part.

35 12810. A ~~motor~~ vehicle service contract may be offered for
36 sale or sold to a purchaser only by the seller ~~that sold the motor~~
37 ~~vehicle or watercraft covered by the service contract.~~

38 12815. (a) An obligor *who is not a seller* shall possess a
39 vehicle service contract provider license. A vehicle service
40 contract provider license shall be applied for and maintained, and

its holder shall be subject to disciplinary action, as if it were a fire and casualty broker-agent license, with the following exceptions:

(1) An applicant for a vehicle service contract provider license is exempt from having to satisfy preclicensing and continuing education requirements, and from having to pass a qualifying exam.

(2) The fee to obtain or renew a vehicle service contract provider license shall be the same as that to obtain or renew a certificate of authority to operate a motor club.

(b) A service contract administrator shall be licensed as a fire and casualty broker-agent.

12820. (a) Prior to offering a vehicle service contract form to a purchaser or providing a vehicle service contract form to a seller, an obligor shall file with the commissioner a specimen of that vehicle service contract form.

(b) A vehicle service contract form shall comply with all of the following requirements:

(1) The vehicle service contract shall include a disclosure in substantially the following form: "Performance to you under this contract is guaranteed by a California approved insurance company. You may file a claim with this insurance company if any promise made in the contract has ~~not been honored~~ *been denied or has not been honored within 60 days the date proof of loss was filed*. The name and address of the insurance company is: (insert name and address). If you are not satisfied with the insurance company's response, you may contact the California Department of Insurance at 1-800-927-4357. ~~Coverage under this contract is not guaranteed by the California Insurance Guarantee Fund.~~" 1-800-927-4357."

(2) All vehicle service contract language that ~~limits or excludes~~ coverage, or imposes duties upon the purchaser ~~or conditions upon coverage~~, shall be conspicuously printed in boldface type no smaller than the surrounding type.

(3) The vehicle service contract shall do each of the following:

(A) State the obligor's full corporate name or a fictitious name approved by the commissioner, the obligor's mailing address, the obligor's telephone number, and the obligor's vehicle service contract provider license number.

(B) State the name of the purchaser and the name of the seller.

1 (C) Conspicuously state the vehicle service contract's purchase
2 price.

3 (D) Comply with Sections 1794.4 and 1794.41 of the Civil
4 Code.

5 (E) Name the administrator, if any, and provide the
6 administrator's license number.

7 *(4) If the vehicle service contract excludes coverage for*
8 *preexisting conditions, the contract must disclose this exclusion in*
9 *12-point type.*

10 (c) The following benefits constitute insurance, whether
11 offered as part of a vehicle service contract or in a separate
12 agreement:

13 (1) A promise to refund some or all of the purchase price of a
14 service contract if the purchaser does not file any claims, files a
15 limited number of claims, or files claims the dollar amount of
16 which does not exceed a set amount or percentage.

17 ~~(2) Coverage for the amount of a deductible under a~~
18 ~~manufacturer's warranty.~~

19 ~~(3)~~

20 (2) Indemnification for a loss caused by misplacement, theft,
21 collision, fire, or other peril typically covered in the
22 comprehensive coverage section of an automobile insurance
23 policy, a homeowner's policy, or a marine or inland marine policy.

24 ~~(4) Reimbursement or payment for travel expenses, meals, or~~
25 ~~lodging.~~

26 ~~(5)~~

27 (3) Locksmith services, unless offered as part of an emergency
28 road service benefit.

29 12825. (a) A purchaser's copy of his or her vehicle service
30 contract, containing all the terms and conditions, must be provided
31 to the purchaser at the time of sale, unless ~~the~~ *one of the following*
32 *is true:*

33 *(1) The sale occurs via telemarketing or direct mail on behalf*
34 *of the seller, in which case the purchaser must receive the vehicle*
35 *service contract within 30 days from the date of purchase.*

36 *(2) The contract has been made available for inspection by the*
37 *purchaser prior to purchase, temporary documentation of all the*
38 *terms, conditions, and exclusions of the contract is given to the*
39 *purchaser at or before the time of sale, and the actual contract is*
40 *delivered to the purchaser within 60 days.*

(b) A service contract sold by a seller in which the obligor is other than the seller may include a provision that reserves to the obligor the right to cancel the service contract within 60 days under the following conditions:

(1) Notice of cancellation is mailed to the purchaser by ~~certified letter~~ postmarked before the 61st day after the date the contract was sold by the seller.

~~(2) The notice is accompanied by a check payable to the purchaser for the full purchase price stated on the contract. However, if the obligor has paid a claim, or has advised the purchaser in writing that it will pay a claim, it may provide a pro rata refund, but may not deduct the amount of the claim from the refund.~~

(2) The obligor provides the purchaser with a refund equal to the full purchase price stated on the contract within 30 days from the date of cancellation. However, if the obligor has paid a claim, or has advised the purchaser in writing that it will pay a claim, it may provide a pro-rata refund, less the amount of any claims paid prior to cancellation.

(3) The service contract ceases to be valid no less than five days after the postmark date of the notice.

(4) The notice states the specific grounds for the cancellation.

(c) An obligor may at any time cancel a service contract for nonpayment by the purchaser, conditioned upon each of the following:

(1) Notice of cancellation is mailed to the purchaser by ~~certified letter~~.

~~(2) If any refund is owed pursuant to Section 1794.41 of the Civil Code, the notice is accompanied by a check payable to the purchaser. Civil Code, the refund is paid within 30 days of the date of cancellation.~~

(3) The service contract ceases to be valid no less than five days after the postmark date of the notice.

(4) The notice states the specific grounds for the cancellation.

(d) An obligor may at any time cancel a service contract for material misrepresentation or fraud by the purchaser, conditioned upon each of the following:

(1) Notice of cancellation is mailed to the purchaser by ~~certified letter~~.

~~(2) The notice is accompanied by a check payable to the purchaser for the full purchase price stated on the contract.~~

(2) A pro-rata refund of the purchase price stated on the contract is paid within 30 days of the date of cancellation.

(3) The notice states the specific nature of the misrepresentation.

(e) An obligor who cancels a contract ~~for underwriting reasons or nonpayment~~ is liable for any claim reported to a person designated in the contract for the reporting of claims if the claim is reported prior to the effective date of cancellation *and is covered by the contract*. For the purpose of this subdivision, a purchaser is deemed to have reported a claim if he or she has completed the first step required under the contract for reporting a claim.

(f) An obligor canceling a contract pursuant to subdivision (b) ~~who pays a claim, or has advised the purchaser in writing that he or she will pay a claim, may provide a pro rata rather than full refund, but may not deduct the amount of the claim from the refund.~~, (c), or (d) who pays a claim, or has advised the purchaser in writing that he or she will pay a claim, may provide a pro-rata rather than full refund, less the amount of any claims paid prior to cancellation.

12830. (a) Prior to incurring an obligation under a vehicle service contract, an obligor shall file with the commissioner a copy of an insurance policy covering 100 percent of the obligor's vehicle service contract obligations. The policy must be issued by an insurer admitted in this state *and authorized by the commissioner to issue that insurance in this state*. The insurer must, at the time the policy is filed with the commissioner, and continuously thereafter, be rated "B++" or better by A. M. Best Company, Inc., ~~and~~ maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars (\$15,000,000), *and annually file audited financial statements with the commissioner*.

(b) An insurance policy filed with the commissioner pursuant to subdivision (a) shall state the name of the obligor. The policy shall provide that all purchasers of vehicle service contracts shall be entitled to satisfaction by the insurer of any and all obligations arising under vehicle service contracts of the named obligor, upon the existence of all of the following conditions and no others:

1 (1) The service contract obligor refuses or fails to satisfy an
2 obligation arising under the vehicle service contract *within 60*
3 *days of the date the purchaser submits proof of loss to the obligor.*

4 (2) The purchaser provides written notice to the insurer that the
5 obligor has failed to comply with an obligation under the vehicle
6 service contract.

7 (3) The purchaser possesses a vehicle service contract sold
8 after the inception and prior to any cancellation of the insurance
9 policy required by subdivision (a), and the vehicle service contract
10 recites the name of the obligor that is insured by the policy as the
11 obligor of the service contract.

12 (c) An insurer's liability under a policy filed pursuant to
13 subdivision (a) shall not be negated by any failure of the seller, an
14 administrator, the obligor, or agents of any of these persons, to
15 report the issuance of a vehicle service contract or to remit moneys
16 to another person pursuant to a contractual agreement. The policy
17 must state that the insurer is deemed to have received the premium
18 for the policy upon payment by the purchaser for a vehicle service
19 contract insured by that policy.

20 (d) An obligor may have on file with the commissioner only
21 one active policy from one insurer at any time.

22 (e) No policy cancellation by an insurer shall be valid unless a
23 notice of the intent to cancel the policy was filed with the
24 commissioner 30 days prior to the effective date of the
25 cancellation, or 10 days prior in the event that the cancellation is
26 due to fraud, material misrepresentation, or defalcation by the
27 obligor or its administrator, if any.

28 12835. (a) In the event an insurer cancels a policy that it has
29 filed with the commissioner pursuant to Section 12830, the obligor
30 named on the policy shall do either of the following:

31 (1) File a copy of a new policy with the commissioner, before
32 the termination of the prior policy, providing no lapse in coverage
33 following the termination of the prior policy.

34 (2) Discontinue acting as an obligor as of the termination date
35 of the policy until a new policy becomes effective and has been
36 accepted and acknowledged by the commissioner.

37 (b) This section shall not relieve an obligor from any obligation
38 incurred under service contracts issued with its name as obligor
39 prior to the date the policy was terminated.

12840. (a) Every obligor or its administrator shall maintain at its principal office complete and accurate accounts, books, and records of all transactions among the obligor, its administrator, if any, sellers, insurers, and purchasers. Records maintained pursuant to this section shall be made available to the commissioner upon reasonable request. Any computerized recordkeeping system must be capable of producing a legible hard copy of all required records. Accounts, books, and records shall include:

(1) A complete set of accounting records, including, but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

(2) Copies of each type of service contract sold.

(3) The name and address of each service contract purchaser to the extent that the name and address have been furnished by the service contract purchaser.

(4) A list of the locations where service contracts are marketed, sold, or offered for sale.

(5) Written claims files which shall contain at least the dates and descriptions of claims related to the service contracts.

(b) All required records pertaining to a service contract shall be maintained by the obligor, its administrator, or the insurer underwriting the contract, for at least three years after the expiration of the contract.

(c) Every insurer that has issued a policy to an obligor shall have an ongoing right to access that obligor's books and records in order to permit the insurer to fulfill all obligations to purchasers.

(d) The commissioner may examine and investigate the affairs of every obligor and any administrator of an obligor. Any examination or investigation shall be at the expense of the obligor or the administrator, in the discretion of the commissioner. Any information contained in the books and records, including, but not limited to, the identity and addresses of sellers and purchasers of service contracts, shall be confidential, except that the commissioner may use the information in any proceeding or investigation instituted against an obligor or an administrator.

(e) An obligor's failure to keep or maintain the required accounts, books, or records, or to provide the commissioner with full and immediate access to those records, shall be grounds for the

1 immediate suspension or revocation of the obligor's vehicle
2 service contract provider's license, and also shall be grounds for
3 the commissioner to issue a cease and desist order pursuant to
4 Section 1065.2.

5 12845. Any vehicle service contract obligor or administrator
6 that provides vehicle service contract forms to sellers or
7 purchasers, directly or indirectly, and fails to comply with Sections
8 12815, 12830 and 12835, is guilty of a public offense punishable
9 by imprisonment in the state prison, or by a fine not exceeding five
10 hundred thousand dollars (\$500,000), or both, and shall be
11 enjoined from further violations by a court of competent
12 jurisdiction on petition of the commissioner. This section shall not
13 apply to a ~~dealer, lessor, or lessor-retailer obligated~~ *seller who is*
14 *an obligor* under vehicle service contracts it sells. The
15 commissioner may issue a cease and desist order pursuant to
16 Section 1065.2 to an obligor or administrator who violates Section
17 12830 or 12835. The commissioner may issue a cease and desist
18 order pursuant to Section 12921.8 to an obligor or administrator
19 in violation of Section 12815.

20 12850. (a) An obligor has the burden of proving that a claim
21 is not covered by a service contract. An obligor has the burden of
22 proving that a claim settlement amount is proper under the terms
23 of the contract.

24 (b) No seller of a service contract who participates in or
25 influences, directly or indirectly, the processing, administration,
26 or adjustment of claims, shall enter into any agreement or
27 understanding the effect of which is to make the amount of the
28 seller's commission or compensation contingent upon savings
29 effected in the adjustment, settlement, or payment of losses
30 covered by the contract.

31 ~~12855. A repair claim under a vehicle service contract~~
32 ~~covering a car that was no longer under its manufacturer's or~~
33 ~~importer's warranty at the time the service contract was sold may~~
34 ~~not be denied on the basis of a preexisting condition exclusion,~~
35 ~~unless the specific preexisting condition that gave rise to the claim~~
36 ~~was disclosed in writing on the vehicle service contract at the time~~
37 ~~the vehicle service contract was sold.~~

38 ~~12860.~~

39 12855. The commissioner may adopt regulations necessary or
40 desirable to implement this chapter.

1 ~~12865.~~

2 12860. The provisions of this part are severable. If any
3 provision of this part or its application is held invalid, that
4 invalidity shall not affect other provisions or applications that can
5 be given effect without the invalid provision or application.

6 SEC. 9. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

